

SENATE BILL REPORT

SB 5754

As of February 18, 2009

Title: An act relating to setting instream flows.

Brief Description: Establishing sustainable instream flows.

Sponsors: Senators Sheldon, Honeyford, Holmquist, Morton and Delvin.

Brief History:

Committee Activity: Environment, Water & Energy: 2/17/09.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Karen Epps (786-7424)

Background: Exceedance curves describe the frequency of flows of a given magnitude during the period of record. Flow exceedance curves are based on an analysis of United States Geological Survey records of historical flow data at rivers and streams. The length and completeness of the gauge record determines the range over which valid exceedance curves can be developed. The reciprocal of the exceedance curve is the recurrence interval, which indicates how often, on average, a specific flow will be equaled or exceeded. For example, 90 percent and 10 percent exceedance flows are discharges that, on average, would be equaled or exceeded once every one and one-tenth and ten years, respectively.

Summary of Bill: Perennial rivers and streams of the state must be retained with base flows in an amount equal to 90 percent of the exceedance curve.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is aimed at correcting at legislative oversight. The statute does not give guidance to the Department of Ecology (Ecology) on how instream flows should be set and does not require that instream flows be set by taking

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

into consideration the amount of water in a stream. This creates a situation in which base flows may be set unrealistically high, even to levels that have never been historically realized in the stream. This bill corrects this by directing Ecology to set base flows at the 90 percent exceedance flow level. These curves are constructed from actual stream flow data. This means that these flows will be established in objective reality of historic flows. The bill will protect the fish since the fish have been in the stream since time in memorial. Agricultural operators have been impacted by instream flow rules that have been set by Ecology. This bill provides direction to Ecology on what a perennial river and stream flow should look like. This provides some clarity on instream flows. This would be an equitable resolution.

CON: Ecology has been using exceedance curves in the instream flow evaluation and setting process. A 90 percent exceedance flow would not be satisfactory to protect and preserve instream resources, in particular salmon and steelhead. It is a flow that is a great deal lower than what is typically adopted by instream flow rules. The bill needs to clarify what period of time will be used when developing exceedance curves. This bill treads on a slippery slope in making agricultural uses more important than other uses. The base flow in this bill undermines the other critical science components of an instream flow rule, including the biology of what is required for listed species. The 90 percent exceedance level is a very low instream flow level. Additionally, this bill gives priority to agricultural diversions over instream resource protection and other water use.

Persons Testifying: PRO: Ed Moats, John Postema, Snohomish County Farm Bureau; John Stuhlmiller, Washington State Farm Bureau.

CON: Darcy Nonemacher, American Rivers; Martin Durkin, Jr., Muckleshoot Tribe; Ken Slattery, Department of Ecology.